

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1074

76

No. 16, SPECIAL CALENDAR.

EDWARD P. MERTZ, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 26, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of exceptions.....	1	1
Testimony for defendant.....	1	1
Defendant's prayers.....	4	2
Transcript of docket entries.....	6	3
Motion for new trial and arrest of judgment.....	7	4
Information.....	8	4
Clerk's certificate.....	9	5
Writ of error.....	10	6

In the Court of Appeals of the District of Columbia.

EDWARD P. MERTZ, Plaintiff in Error, }
vs. } No. 1074.
THE DISTRICT OF COLUMBIA. }

1 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA }
vs. } No. 203,951.
EDWARD P. MERTZ. }

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered that in the police court of the District of Columbia, at the city of Washington, in said District, at the time hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill of Exceptions.

In the Police Court of the District of Columbia, March Term, 1901.

DISTRICT OF COLUMBIA }
vs. } No. 203,951, D. C. Docket.
EDWARD P. MERTZ. }

At the trial of this cause held on the 15th day of March, 1901, the District of Columbia proved the following facts, which the defendant, by his counsel, in open court, admitted to be true, viz., that on March the 19, 1900, the defendant cut a door in the partition wall between his store and the F Street entrance to the Columbia theatre, in this city, through which a large number of people entered and left the said theatre, without a permit from the inspector of buildings so to do.

And thereupon the defendant proved the following facts: That said door was made with the knowledge and consent of the executor and trustee of the Metzert estate, the owner of the building,
2 and after the defendant had called the matter to the attention of the board of fire underwriters, and had been advised that the opening of said door would not increase his insurance, and that the board did not object to it; that the defendant did not apply to the inspector of buildings for a permit to make said door because he regarded the opening of it as a minor repair, and that a permit

was not necessary; that the opening of said door did not affect the strength or stability of said building; that its presence does not endanger public safety; that the door in question is located sixty feet back from the street, in a partition wall of the Metzerott building, which is a building distinct and separate from the Columbia theatre; that the inspector of buildings, when application was made for a permit for the F Street entrance to the Columbia theatre, declined to consider the area of said entrance as part of the *lobby* of the theatre; that there is a fireproof door in the wall separating the theatre from the room used for the F Street entrance to said Columbia theatre; that before the door in question was made there was a small window in the wall near where the door is now, which was used for selling tickets for the theatre from an office in the room now occupied by the defendant as a drug store; that the stock of goods carried by the defendant is not of an inflammable character; that it consists of drugs and medicines, and does not include chemicals and acids likely to ignite by spontaneous combustion or to explode in case of fire; that the cellar under the Metzerott building, in which the defendant's store is located, is open and there are no partition walls in it; that the defendant's store is heated and lighted from the same plant or

3 source as the Columbia theatre; that it took altogether about two weeks to complete said door; that similar doors to the one in question exist in the enclosing walls of the entrances to the National theatre, which *was* made prior to the adoption of section 182 of the building regulations, and the Grand opera-house, in this city; that the doors in the enclosing walls of the entrances to the Grand opera-house and the National theatre communicate with bar-rooms; that the door in the Grand opera-house was opened last summer; that the work was begun without a building permit and was stopped, but a permit was afterwards granted for it; that the existence of the door in question is necessary for the comfortable occupation of the defendant's store; that without this door the said store is untenable in summer because of the heat and lack of proper ventilation; that the entrance to the auditorium of the Columbia theatre by the F Street entrance is through a fireproof door in the north wall of the theatre building; that about a week after the door in question was opened complaint was made about it by some one unknown to the defendant, whereupon all three of the then Commissioners of the District came and looked at it, and after examining it carefully, both from the defendant's store and the entrance to the theatre, expressed themselves as satisfied with it, but gave no permit for the opening in said wall entrance at which leads through said building to the Columbia theatre.

This was all the evidence in the case.

4 Thereupon counsel for the defendant requested the court to rule as a matter of law that the defendant was not required to obtain a permit from the inspector of buildings to make the door in question; but the court refused to so rule; to which refusal and ruling the defendant, by his counsel, then and there duly excepted.

And thereupon counsel for the defendant requested the court to rule as a matter of law that the cutting of the door in question was a minor repair, not affecting the strength or stability of the building, and that a permit from the inspector of buildings was not required; but the court refused to so rule; to which refusal and ruling the defendant, by his counsel, then and there duly excepted.

And thereupon counsel for the defendant requested the court to rule as a matter of law that the omission of the defendant to obtain a permit from the inspector of buildings to make the door in question did not render the making of it without such permit unlawful; but the court refused to so rule; to which refusal and ruling the defendant, by his counsel, then and there duly excepted.

And thereupon counsel for the defendant requested the court to rule as a matter of law that the defendant, being charged with cutting a door in the wall of a certain building on F street northwest without a permit from the inspector of buildings so to do, cannot be convicted under section 182 of the building regulations in regard to openings in enclosing walls of approaches to or exits from theatres; but the court refused to so rule; to which refusal and ruling the defendant, by his counsel, then and there duly excepted.

5 And thereupon counsel for the defendant moved the court, upon the whole evidence and facts proven in the case, to discharge the defendant; but the court refused to so rule; to which refusal and ruling the defendant, by his counsel, then and there duly excepted.

Each of said exceptions was duly noted upon the minutes of the court before the court announced its judgment in the case, and notice was then given of the intention of the defendant to apply for a writ of error.

In witness whereof, at the request of the defendant's counsel, the presiding justice signs this bill of exceptions this 18th day of March, A. D. 1901.

IVORY G. KIMBALL,
Justice Presiding.

6 In the Police Court of the District of Columbia, February Term, 1901.

DISTRICT OF COLUMBIA	}	No. 203,951. Information for Violation of Building Regulations.
vs.		
EDWARD P. MERTZ.		

Continued to February 7th, 1901, and March 15th, 1901.

March 15th.—Defendant arraigned March 15, 1901; plea, not guilty; jury trial; verdict, guilty; judgment, guilty; sentence: To pay a fine of ten dollars, and, in default, to be committed to the work-house for the term of thirty days. Notice given of filing motion for a new trial. Notice given by defendant of his intention to apply to a justice of the Court of Appeals for writ of error.

M'ch 15.—Recognizance in the sum of \$100.00 entered into on writ of error to Court of Appeals D. C., upon the condition that in the event of the denial of the application for a writ of error the defendant will, within five days next after the expiration of ten days, appear in police court and abide by and perform its judgment, and that in the event of the granting of such writ of error the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Oliver S. Metzertott, surety.

March 16th, 1901.—Motion for new trial and arrest of judgment filed.

March 18, 1901.—Bill of exceptions filed, settled, and signed.

March 19th, 1901.—Writ of error issued by Court of Appeals.

MARCH 26TH, 1901.

I hereby certify, under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

[Seal Police Court of District of Columbia.]

F. A. SEBRING,
Dep. Clerk Police Court, Dist. of Columbia.

7 In the Police Court of the District of Columbia.

Filed March 18, 1901.

DISTRICT OF COLUMBIA	} No. 203,951.
vs.	
EDWARD P. MERTZ.	

And now comes the defendant, by his attorney, and moves the court for a new trial and for an arrest of judgment in this case:

(1.) Because the cutting of the door in question was a minor repair and did not require a permit from the inspector of buildings.

(2.) On exceptions taken by the defendant to the rulings of the presiding justice during the trial.

(3.) Because the warrant charges the defendant with no offense known to the law.

(4.) Because the warrant in the case was improvidently issued and was not directed to or against parties entitled to make defense.

S. T. THOMAS,
Attorney for Defendant.

8 In the Police Court of the District of Columbia, January Term, A. D. 1901.

DISTRICT OF COLUMBIA, ss:

Andrew B. Duvall, Esq., attorney for the District of Columbia, by James L. Pugh, Jr., Esq., special assistant attorney for the District of Columbia, who, for the said District, prosecutes in this behalf in his

proper person, comes here into court and causes the court to be informed and complains that Edward P. Mertz, late of the District of Columbia aforesaid, on the 19th day of March, in the year A. D. nineteen hundred, in the District of Columbia aforesaid, and in the city of Washington, on F street northwest, did then and there cut a certain door in the wall of a certain theatre building on said street without a permit so to do from the building inspector of said District, contrary to and in violation of the building regulations of the District of Columbia, and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,

Attorney for the Dist. of Col.,

By J. L. PUGH, JR.,

Special Assistant Attorney for the District of Col.

Personally appeared C. W. Sommerville this 28th day of January, A. D. 1901, and made oath before me that the facts set forth in the foregoing information are true and those stated upon information received he believes to be true.

[Seal Police Court of District of Columbia.]

W. H. RUFF,

*Deputy Clerk of the Police Court
of the District of Columbia.*

9 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to —, inclusive, to be true copies of the originals in case No. 203,951, wherein The District of Columbia is plaintiff and Edward P. Mertz defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this — day of March, A. D. 1901.

Seal Police Court
of District of Co-
lumbia.

JOSEPH Y. POTTS,

Clerk Police Court, District of Columbia.

9½ [Endorsed :] No. —. District of Columbia vs. Edward P. Mertz. Transcript of record.

10 Filed Mar. 19, 1901. Joseph Y. Potts, Clerk Police Court, D. C.

UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable I. G. Kimball,
judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Edward P. Mertz, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 19th day of March, in the year of our Lord one thousand nine hundred and one.

Seal Court of Appeals,
District of Columbia.

ROBERT WILLETT,

Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

R. H. ALVEY,

*Chief Justice of the Court of Appeals
of the District of Columbia.*

[Endorsed:] Filed Mar. 19, 1901. Joseph Y. Potts, clerk police court, D. C.

Endorsed on cover: District of Columbia police court. No. 1074.
Edward P. Mertz, plaintiff in error, vs. The District of Columbia.

